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Résumé

Responsibility is a core principle for future international law as well as for the transformation of governance. The conference, in the perspective of the Paris climate negotiation, develop five issues:

1) A historical perspective: how did we come to discover the decisive role that responsibility will play in the coming international regulations?

2) Some illustrations of the major shortcomings of the present international law and the need to take a broader vision of the international regulations in order to fill the gap.

3) Some recent evolutions of law and governance in tune with the introduction of responsibility principle.

4) A presentation of the draft of a Universal declaration of human responsibilities, with a commentary of the concrete consequences of its principle.

5) The ongoing process of constitutionalisation of laws and the relevance of the responsibility approach in accordance with this constitutionalisation, with an illustration with the cases for children's protection and food security.

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Texte complet

Responsibility, Law and Governance

In 2014, Collège de France, the world famous French academic institution has launched a dialogue with proeminent international jurists from the US, Brazil, China and France in a program called “Taking Responsibility Seriously”. This programme, which intends to make legal recommendations for the COP21 negotiation on climate starts from three statements:

1) International law and legal systems are presently lagging behind the reality of the challenges that our societies are facing. Climate is a perfect illustration.

2) In consequence, we need to carry on a transformative process of the international and national legal systems.

3) Responsibility will be a strong driver for this process. However, the very name of the program, “Taking Responsibility Seriously” means that although responsibility has been for centuries at the core of legal systems, it has not got the attention it deserves at the international level.

I shall develop five points:

1) A historical perspective: how did we come to discover the decisive role that responsibility will play in the coming international regulations?

2) Some illustrations of the major shortcomings of the present international law and the need to take a broader vision of the international regulations in order to fill the gap.

3) Some recent evolutions of law and governance in tune with the introduction of responsibility principle.

4) A presentation of the draft of a Universal declaration of human responsibilities, with a commentary of the concrete sequences of its principle.

5) The ongoing process of constitutionalisation of laws and the relevance of the responsibility approach in accordance with this constitutionalisation, with an illustration with the cases for children’s protection and food security.

1.An historical perspective: responsibility and international regulations

There has been in the past a tendency to reduce international regulations to international law and inter-states relations. That cannot be the case anymore. Other major players emerged, sometimes more powerful than the states themselves, transnational cooperations, large financial institutions, international NGO and there are many other regulations than international conventions. Therefore, we have to look at international law as an integral part of a more comprehensive global governance issue.

I am not a lawyer by training and experience but a practitioner and theoretician of governance and it is from this point of view that I speak.

Our starting point, 20 years ago, has been the growing difficulty of humanity to face its present and coming challenges. It has now become clear that humanity will have to undertake, during the next decades, a great and systemic transition towards sustainable societies. Global regulation is but a part of this challenge which will imply a great lot of changes, running from individual behaviour and mode of life to a new vision of economy and governance and new ethics. But the creation of new international regulations will be a very important component of this global transition.

How to conceve international regulations? We have first to look at the obstacles. Over the last 40 years we have been facing a contradiction. On the one hand, considering the dramatic growth of our global interdependencies, whether it be among societies, with the globalisation of trade, economy and finance, or whether it be the interdependencies between humanity and biosphere, we clearly need a corresponding increase in the strength, the scope and the efficiency of global governance. However, it did not happen significantly, even if a number of international agreements have been signed. One could even argue that the consensus which prevails presently in the UN system and the exclusive sovereignty of the states, except for European Union member states, have been a major obstacle to any substantive progress. But the resistances to the development of a stronger global governance expresses the feeling that yet the present governance is neither legitimate, nor democratic or efficient. As long as we do not overcome this contradiction it will be difficult to move forward.

To build a global governance we need four components:

a) Global regulation has to be conceived as a response to the need to manage a common good, which cannot be managed separately by the different nations and which really matters for all societies. Only this necessity to manage in a cooperative way the common good justifies to sacrifice part of the sovereignty and autonomy of each nation. Climate and more broadly stewardship of the planet, health, science and technology are among these common goods.

b) We need a sense of belonging to one community, which is not presently the case although the flows of informations, people, goods and services going from one region to another has grown over the last 30 years at an incredible pace. Some persons use to talk about a “global village”. But as the famous sociologist Edgar Morin puts it, it’s a village without rules, justice and reciprocity. We badly lack the feeling of belonging to one community, which is, combined with the conscience of to give with each one’s own identity, in an anthropological leap forward and can only result from a social process. We experienced such a process, in the ‘90s, with the Alliance for a United and Responsible World, which involved people from the different regions of the world and from different social professional backgrounds. This dialogue showed that what unites us is stronger than what separates us.

c) Sharing comon values. It is integral part of the feeling of belonging to the same community

d) Conciliating unity and diversity. This dimension of international regulation is often underestimated: if such regulations would mean uniform rules and behaviour, notwithstanding the diversity of contexts, they would prove unfit to any of them and would represent constraints which would not be felt legitimate. One of the important consequences of a generalised globalisation is that there is no more a clear cut between what is considered as domestic affairs and what is considered as international ones. On the contrary, the new situation is better described by the concept of “glocalisation”, altogether local and global. This is why every serious issue requires multi-level governance, articulation between the different levels. It is something quite familiar with the European integration: the official principle along which there is on one side issues of European competence and on the other issues of national or subnational competence hardly resists to the day-to-day reality. In a way, it is the same with the WTO: China entry in WTO has supposed many domestic reforms.

Actually, we first discovered the pivotal role of responsibility when, through the Alliance process, we tried and discovered what could be our common values through an inter-religious and inter-cultural several-years process.

Until now the only common value agreed upon by the international community is human rights. But it was adopted by what was then the “international community” just after World War II, at the moment when Western countries would dominate the international scene. The draft and

endorsement of the Universal Declaration of Human Rights has been initiated in a large measure by a French jurist, René Cassin and by Eleanor Roosevelt, the wife of the late President of the United States and it is undoubtedly inspired by the historical experience of the similar declarations at the moment of independence of United States and at the moment of the French Revolution. Of course, the adoption of the Universal Charter by all the countries has helped make significant progresses; however, the contenders of the Declaration, even when their critiques are not really inspired by their concern for original cultural roots, cannot be denied that human rights is part of the Western culture and not fully universal.

Why not to stick only to human rights as, over the years, it has become “universal”? Because this value, as stated as soon as the so-called First International Conference on Environment in 1972, does not deal with the relationships between humanity and the biosphere, and more broadly do not properly addresses the issue of global interdependencies. However, we are now in a multipolar world, where Western traditional countries cannot pretend to decide alone what is universal and what is not. Reason why we would need this truly inter-faith and intercultural dialogue to discover which these universal values could be, including the possibility that it was impossible to agree on none of them. But the experience proved successful. What were the characteristics of such universal values?

-to be truly universal, they should be met in different cultural traditions,

-it should help address issues of our global interdependencies, among societies as well as between humanity and the planet,

-it had to be a counterpart to human freedom and orient individual choices,

-it had to fit with what is generally called the new anthropocenic era, an era when the impact of human activities on biosphere had become so great as to be integral part of biosphere regulations, as it is illustrated with climate change, transformations of the atmosphere, loss of biodiversity, acidification of oceans, and the like,

- it has to go hand in hand with human rights.

We then found that there was one unique value compatible with these five criteria and it is responsibility.

Why is responsibility to be found, in any cultural tradition? Because it is an integral component of any community: Responsibility reflects reciprocity: my impact on the other members of the community concerns me. At the point that the extent of this conscience of responsibilities would delimit the community itself. This is reflected in legal systems: the impact of my acts out of my community is not taken in account. One illustration is the cultural difference between communities which make a clear distinction between man and nature, the latter being not part of the community, and the cultures, often called “indigenous”, for which the relationships between human beings and the rest of the living realm are “family relationships” with the corresponding feeling of responsibility towards nature.

The corollary of globalisation and anthropocenic era is that the conscience of responsibility is expanding at the whole humanity and the whole biosphere. Therefore the search for common values meets the need to build the feeling of being part of one community.

What is the role and the scope of values in a society? They operate at three levels:

-at the level of individual behaviour, values orient, conduct and guide the resolution of ethical dilemmas,

-at the collective level they guide the collective norms of the different stakeholders and are the basis for the social contract which connects each stakeholder with the rest of the society,

-it is the ultimate reference for normative regulations and the legal system. In complex societies, human activities are strongly interwoven, which means that the impact of these activities cannot be accountable separately to each of us, reason why the responsibility principle, as we can now call it, requires rules of co-responsibility.

Now that we have seen the origin of the responsibility principle in relation with two of the four components of international regulations, a sense of belonging to one community and common values, we have to see whether it fits with the two other components: dealing with common challenges, conciliating unity and diversity.

As for the management of global common goods, it calls for new rules defining not only the normative way to have each actor accountable for its impact on that common good but also calls for strong rules of exercise of co-responsibility. In order to meet this requirement, we need to give responsibility principle and co-responsibility exercise a normative value: reason why we shall need at one moment to have a Universal Declaration of Human Responsibility endorsed by the international community as a third pillar of the community aligned with the two former pillars, the UN Charter and the Universal Declaration of Human Rights.

More recently we understood that the strength of the responsibility principle was that it perfectly meets the last requirement for international regulation, that is the conciliation of unity and diversity. This is one main difference between duties and responsibilities. Duties means compliance with precise rules. They do not leave enough degrees of freedom to face the diversity of the situations. On the contrary, the responsibility principle will translate the unity requirements in general common guidelines and the exercise of responsibility at any level will require to translate these guidelines into behaviours as well as into public policies grounded in each specific context.

This ability of the responsibility principle to meet the four requirements of international regulation explains why it shall be the pivotal principle for transition towards responsible societies.

2) Some examples of the reasons why the present international legal system is more and more unable to meet the needs of present humanity challenges.

2.1 The sovereignty of states does not match the global challenges

First of all, sovereignty of states, which is the fundamental principle of the UN, far from being the way to solve global problems and manage the global common good have become a major obstacle to solutions. Just think about international negotiations on climate. Who is leading these negotiations in most countries? The Ministers of Foreign Affairs and their diplomats. When one begins to think, isn’t it strange to see that what is most domestic, the climate of our daily lives, is dealt with as if it be a foreign affair? And the very nature of the negotiations is closer to traditional international negotiations, one or two centuries ago, when diplomats had to confront and conciliate opposed “national interests” than to common good management. Is it something existing like national interests when it comes to the climate? These national interests exist only because nations and states exist! Would the climate negotiations be structured in a very different way, for example by creating a dialog among the different stakeholders at a global level, it would oppose a completely different set of interests and would probably reach completely different results. Just imagine what would be such dialog at an international level! One would probably discover that the conscience of the seriousness of the situation created by climate change requires for the common good energic measures far beyond the result of interstate negotiations.

2.1 The inefficience of present civil and penal laws

The second gap is between the law and its implementation. When one considers the international agreements related to environment, the implementation gap is often very wide.

On one hand, there is nothing like dispute settlements as exist for the WTO, or like the ones which exist for the delimitation of sea national economic exclusive zones. And, , no one state is ready to sue another one for not respecting its obligations towards environment, as no -one can or dare ppppretend being the defender of the cause of humanity.

And, on the other hand, when you look at the capacity of civil law and penal law to impose dissuasive sanctions, one discovers that it is in practice quite uneffective.

Civil law is often uneffective for three reasons. First, it requires to identify specific interests damaged by others' actions, which cannot correspond to the global harm created by these actions. Second, civil law is about identifying damage and fixing the compensation, but what could be the material compensation of the destruction of the living conditions? Third, in reference for example to major companies or states, pay a compensation is hardly dissuasive of bad behaviours and, if repeated, quickly assimilated to a new taxation and as such just integrated in the economic rationality.

As for penal law, its application requires to establish "beyond reasonable doubt" a causality link between an action and its impact. This is very hardly the case in complex societies where the actions are interwoven. A striking example is that after the global financial crisis of 2007, which impacted the whole world and would result from irresponsible behaviours, driven by quests of profit from the part of leaders and professionals of major financial institutions, none of these people responsible for the crisis has been put in jail, because of the incapacity to clearly demonstrate the impact of individual behaviours on the global crisis.

This means that in a new globalised world irresponsibility has become the rule and not the exception. In order to foster entrepreneurship, the 19th century had invented the concept of limited liability companies in order to draw a clear cut between the capital invested in a company and a personal and family capital. It proved effective. But haven't we entered in a new world of unlimited irresponsibility? Considering the absence of responsibility either from the political or from the economic leadersrelated to climate change, the answer is yes: a society of unlimited irresponsibility.

2.3 States are not by far the only actors of intenational regulations

The third weakness of present international regulations and legal systems is that it defines the relationships between the states as if they were the unique actors of globalisation. However, states over the last 40 years have fallen from their pedestal. New powerful actors have emerged, participating to the global action and getting every day more freedom towards the states, including the possibility to put the states in competition, as illustrated by the rush to the bottom of taxation practiced by global economic actors. These new actors are of course major companies and financial institutions but they are also territories – think of the largely autonomous development of the main megapoles – and even the international NGOs which, at the condition that there are provisions in the international law system to do it, are much more able to sue states which have failed in meeting their obligations.

2.4 The two existing pillars of the international regulations are both at stake

The fourth limit to the present state of affairs is that the two first pillars of the international community, are now at stake. Think first of the role of the international community for keeping peace and security. The writers of the UN Charter had in mind war between states and dispute settlements between states. But most present conflicts are principally civil wars, even if each party

to the conflict may be supported from outside. Furthermore, the threats to peace and security come largely from non-state actors such as Islamist terrorists or drug Mafia. Which explains the inability of the UN system to adapt its mission to these new threats to peace and security. Let me take the example of Libya and Mali. A coalition of US, English and French troops, under a pretty vague mandate from the UN in application to the "obligation to protect" principle, has given an end to the dictatorial regime of Gaddafi. Very good, but with two very important restrictions. First, it has created a complete mess in Libya, which participates to the global insecurity of the vast Sahara zone and the neighbouring countries. Second, the intervention of the Western troops has allowed the African mercenaries of Gaddafi to run away from Libya, with their cars and their heavy weapons, contributing to spread insecurity and instability in different sub-Saharan African states. But for those two messy results, the international community or the leaders of the three countries which destroyed Gaddafi regime cannot be held responsible according to international law. And if you look now at Mali, I had to personally advise Presidency of Mali on the exit of the major crisis in 2012 which was the direct result of the events in Libya. The rebels, first Tuareg autonomists but very quickly Islamic terrorists were on the verge to take the control of an airport near Mopti and this control would have freed the way to Bamako. Could UN peace and security chapter be efficient facing such situation? Of course not. And it is only the intervention of French troops within hours which saved Mali from becoming an Islamic fundamentalist caliphate. And the UN mission sent months after and which is supposedly ensure the security of Mali is absolutely ineffective in a situation when you have to face scattered terrorist attacks.

But the second pillar, the International Declaration on Human Rights is also at stake. Over the years, it resulted in a series of international conventions expanding the original political rights to economic, housing and environmental l rights. So far so good. But at the difference of political rights which only relates to political regimes, the enforcement of economic or environmental rights calls for actors, in particular states or public authorities responsible for enforcing these rights. Reason why the Belgian jurist François Ost has written a book: Responsibility, the Hidden Face of Rights. However in most cases this responsibility to make rights effective do not exist, and therefore the multiplication of "rights" becomes mainly lip service

Last but not least, we have seen that the two present pillars do not address the major issues of the relationships between humanity and biosphere.

2.5 The impossibility for non-states actors to incriminate the states

Another limit, that I had mentioned, to the present international legal system relates to the possibility for civic organisations to incriminate the states. However,, this possibility offered in Europe for non-sstate actors to go directly to the European Court has a very important impact on the will of the member states to respect their obligations.

I would like to go up these different limits when looking at the climate issues.

2.6 The case for climate change: an illimited irresponsibility

First, who can be held responsible of the rise of the level of the sea, a direct consequence of the climate change, which threatens Pacific islands or a large state like Bangladesh with an ecocide? No-one. There are neither a court to go and present a claim nor a legal system in the name of which to incriminate the major emitters of greenhouse gases.

In the same way the present commitments of the so-called international community have no legal implications. In Cancun, at the 16th Conference of Parties, the states have agreed to limit the temperature rise before the end of the 21st century at two degrees. Four years later, it becomes obvious that the measures taken by the different states to curb greenhouse gas emissions fall very far from this ambition which was acknowledged as a very important limit if we wanted to preserve

humanity from major catastrophes. Is anyone legally responsible for this failure? The answer of course is no.

And what is the present juridical status of climate? Is there any governance body for this major common good? Here again the answer is no. Contrary to the sea, in legal terms climate remains res nullius which everyone can impact without any legal consequence.

Last example, one knows that until now the rise of the average temperature of the planet has been limited by the importance of carbon sinks, ocean at the forefront. But who is the owner and the beneficiary for these carbon sinks? No-one or to be more accurate, in the present situation major emitters are the de-facto exclusive beneficiaries of these sinks.

3) Some recent evolutions in tune with the perspectives opened with the responsibility principle.

The portrait which has been drawn of the present legal system gives a pretty dull image of the situation. Hopefully, even if the evolution of the global legal system is much too slow compared with the reality of our interdependencies, it would be unfair to do as if nothing positive had happened over the last decades. Which means that even if the endorsement of a Universal Declaration of Human Responsibilities by the international community in order to build the needed third pillar remains a major goal, being considered the present resistance of the states to this idea as it opposes to their sovereignty, we know that it will be the final step of a global evolution of the legal system and not its prerequisite. Therefore, we have to consider the transformative processes going in the good direction. I will mention six examples.

3.1 The porosity between soft and hard las have steadily increased

The first evolution is the emergence of soft laws and the continuities created between soft law and hard law. A few years ago, many jurists would argue that a soft law was not a law at all, as a law is mandatory to every actors and cannot be confused with voluntary commitments which characterise the soft law. But the situation has changed by degrees. Control of the respect of ISO laws, a voluntary regulation, can be stricter than the control of mandatory laws by an administration which lacks human means, is often sensitive to economic arguments not to respect the public norms or even subject to corruption. The CSR commitments of companies might once have been mere lip service and public relations-driven, however as it becomes a part of the “contract” between a company and its clients, demonstrations that they have not been respected can be, in terms of reputation or even in front of the court much more harmful than any fine. So we have assisted to two combined movements: the increased influence of soft law and a greater porosity between soft law and hard law, soft becoming hard and hard becoming soft.

3.2 The constitutionalization of the laws

A second very interesting evolution is what some jurists call the “constitutionalization” of the law. Even in the recent past, constitutions were more often than not considered to be addressing nearly exclusively balance and devolution of powers. The preamble of the constitutions, although describing the major common values of the societies, could be considered as a lip service, or at least without any real legal impact due to their very general formulation. But things have changed in two ways. First of all, the role and influence of the courts in charge of controlling the conformity of the laws to the constitution -whether it be constitutional court, constitutional council or Supreme Court-, has expanded with a control of the conformity of laws to the preamble of the constitution, which means that this preamble has become a major legal reference. The second evolution is a possibility for civic organisations to go to these courts and claim against unconstitutional laws, even if these laws have been yet passed by the legislative body, at a point where some jurists or politicians think that these constitutional control bodies are a threat to the sovereignty of the people.

The combination of these two movements , preambles as a supreme legal reference and possivbility for civic organisations to go tohe court should not be underestimated. It can be used in two ways: in a “negative” way, by censuring laws which do not conform to the principles of the constitution, and in a “positive” way by censuring governments which have lacked due diligence to pass law or adopt administrative measures able to enforce the principles formalised by the constitution. In other terms, a government, in reference to these principles can be held responsible either for what it did or what it didn’t. We can see the proximity with the responsibility principle.

3.3 A growing attention paid to “commons”

A third very interesting evolution relates in appearance mainly to economy. The attribution of the Nobel economic prize to Elinor Ostrom, for her pioneering work on the commons, has brought many intellectuals and many civic movements to pay a growing attention to the notion of common. What is a common? It is a good or service which benefits a community and which needs a collective governance by this community. It fits with the Latin juridical concept of res communis omnium, which cannot be reduced to “public good” administrated by the public authorities. The “commons” cover a very large spectrum of goods and services, from soil or water to knowledge and experience. It highlights the importance of cooperative behaviour, of multi-stakeholder governance, of elaboration of specific rules of governance to ensure a fair balance between contribution to the maintenance of the common good and benefits got from its use. One can easily see, with the concept of global public trust, the new avenues which could open for the management of climate or other public goods of this kind. Instead of international laws putting obligations on the states, it opens a way for new kinds of regulation through the building of an autonomous governance of certain global common goods.

3.4 The co-production of public good

This new interest in favour of commons have also something to do with the evolution of the governance conception. Just as a common is in between market and public good, the evolution of governance states that in practice common good can only be produced by the cooperation of different actors. This is what is called the co-production of public good. Instead of representing the society by the opposition of private actors, only driven by private interests, and public authorities, fully devoted to public interests, the notion of co-production of public goods gives a greater importance to the conditions of cooperation of different kinds of actors in the name of the public good. As you see, we are not very far, once again, from the co-responsibility principle.

3.5 The growing trans-national regulations of trans-national companies

The regulation of the transnational companies is also quite interesting. Traditionally, companies would use their “juridical veil” to protect themselves, considering that they had no responsibility towards their foreign subsidies, contractors or subcontractors. Which actually was a very good way to escape their responsibilities and putting what was wrong out of the scope of the national legal systems of the country in which the company was registered. But things are changing quite quickly. Unfortunately it is the pressure of catastrophes such as petroleum shipwrecks destroying coastal areas, e.g Erika for Total, or the catastrophe of the Rana Plaza in Bangladesh that have brought on the forefront the concepts of sphere of influence and of due diligence. Therefore one can now talk about co-responsibility along a supply chain. The Principles for Responsible Investments, PRI, promoted by UNEP Finance since 2006 have dramatically grown in importance since the financial crisis. They have been endorsed by asset managers of different kinds representing not less than 45000billins dollars!. Presently, just as it has been the case for CSR at its beginning, this endorsement of principles can be lip service at the beginning,however, through a clearing house approach more and more of these assets managers conduct in depth researches on the companies they have shares of and on their supply chain, creating a new momentum for the responsibility of economic and financial actors

Alleged compliance to the PRI guidelines, just as for CSR, might have been, at the beginning, mainly lip service and public relations. But the existence of national focal points and the possibility for civic movements to present statements at this national focal point, has created, through the need for the companies to respond to these statements, something closer to the arguments and counter-arguments presentations which are the characteristics of the court, even if, in the case of OECD Guidelines, there is no such thing as a judgment and of a sanction. But for a company a loss of confidence of the general public in its products can be more harmful than a fine imposed by the court after years of discussion. The reason why companies will often prefer conciliation processes a contrary to the civic movements which are in favor of going is precisely the consequences for a company of the degradation of its public image. Furthermore, as described previously, the lack of compliance to PRI Guidelines, for a company or an asset manager who has claimed to comply with them can very well be taken in a further judgment as respectless of the implicit contract with the client and false advertising. The interesting thing with guidelines is that it is by nature close to the responsibility principle. Guidelines are not normative detailed obligations,. All the contrary, by endorsing these guidelines, companies are responsible to find concrete expression of these guidelines in their own specific case.

4) The eight principles of the Universal Declaration of Human Responsibilities and a few comments.

A critique often heard about responsibility is that it is such a general principle that everybody can pretend being responsible and many governments call after responsible citizenships without being themselves responsible towards their citizens.

Over the years, the Alliance for responsible and sustainable societies, AR&SS, through many inter-cultural and inter-professional dialogs has been eager to make responsibility principle very substantial, in declining it into eight more detailed sub-principles. I will briefly comment them, in particular in relation with the search for climate international legal regulation.

4.1 The exercise of one's responsibilities is the expression of one's freedom and dignity as a citizen of the world community.

This first principle associates clearly the scope of the responsibilities and the belonging to a world community. By stating the link of responsibility on one hand, freedom and dignity on the other hand, the responsibility principle is clearly distinct from the concept of duties. For example, many constitutions in the South Asia region, refer to duties of citizens. But, in a way, having to fulfill duties is much more in tune with an authoritarian regime, where citizens are subjects to the state, than of a democracy where citizens are invited to exercise his or her responsibility as part of freedom and dignity. I do not mean that in a democratic state citizens have no duty but only responsibilities, there are of course duties, sending the children to school, complying with the laws, paying the taxes and so on and so forth, but the more democratic is a state, the more freedom will be given to the citizens, the larger will be the scope of citizens responsibilities.

4.2 Individual human beings and everyone together have a shared responsibility to others, to close as distant communities, and to the planet, proportionately to their assets, power and knowledge.

For many defendants of the human rights, rights are on the side of the poor, responsibilities on the side of the mighty and the rich. But it is not the point of view of the vulnerable groups themselves who claim their own responsibilities, in particular towards their own local community, as they are the very expression of their dignity and citizenship. This is why it is so important to constantly recall that for each person and each institution responsibilities and rights are complementary, are the two faces of the same coin. But of course the more power, the more knowledge, the more potential impact on local and distant communities, and the greater responsibilities. The insistence on the responsibilities to distant communities recalls us that at an era of globalisation, it is the nature of the

impact which determines the scope of responsibilities. Actually, in a democracy the governments are responsible towards their electorates, and companies are responsible towards their shareholders. But it is precisely the gap between the extent of the impacts and the consequences of the political and economic institutions which make our societies to be illimitedly irresponsible.

4.3 Responsibility involves takiing in account the immediate or differed effects of all acts, preventing or offsetting their damage, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law. It applies to all fields of human activity and all scales of time and space.

I have mentioned the adaptation of the civil and penal laws to the damage caused to climate. The damage-compensation approach is inappropriate for climate: we have collectively the responsibility to avoid the change and not just to compensate the damage caused to specific countries or human groups. Contrary to what comes from the penal law, the fact that damages had not been perpetrated intentionally does not exonerate from responsibilities. Also important is the fact that responsibility has to be assumed including the acts which affect a common good which is not a subject of law. It extends the exercise of responsibility to non-human subjects in particular nature, biosphere and climate which are not able to go to court. This extended understanding of responsibility is, in my view, better than talking of the “rights” of non-human.

4.4 Such responsibility is imprescriptible from the moment damage is irreversible.

Contrary to crimes, there is no strict limit of years after which responsibility could not be invoked. This is of course the case for what is usually called the “ecological debt”, that is the impact on the industrialised societies on biosphere, mainly the Western societies, since the beginning of the Industrial Revolution. But actually it would be unfair to consider that it is only since industrialisation that societies have negatively or positively impacted the biosphere. Deforestation, loss of fertility of soils, desertification or loss of biodiversity have been a reality in many societies and even the cause of their ultimate ruin. But this sub-principle calls for the greatest attention paid to actions which might well provoke irreversible effects. It is actually the case for climate. The precautionary principle, which now tends to be part of the common law, calls for attention about innovations, in particular technical ones, which possible effects have not been yet clearly evaluated. This principle is quite close to the responsibility principle: just as for putting one’s life in danger, which appreciates a risk and not the link of causality between an act and its lethal consequences, responsibility and precautionary principle addresses risk. But the same has to be said about inertia: non-acting, for example once again for protecting the climate, is as detrimental as poorly evaluated innovations.

4.5 The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice-versa.

As we have seen, the present civil and penal laws target either individuals or institutions but hardly both of them. If we go back to the financial crisis, we can see that this distinction between the institutions and the individuals is uneffective. Moral hazard, that is impunity of irresponsible behaviours, concerns all together the financial institutions, in their very logics, the executive bodies of the institution as well as some professionals such as the traders. There is a recent very interesting precedent, the case of BNP Paribas, the largest French bank. It has been sentenced an USD 8.9 billon fine for violation of the American embargos against Sudan, Cuba and Iran. It’s a very interesting precedent: the actions considered for the sentence did not take place on the American territory and was not from an American company. It is therefore a case of truly extraterritorial application of the American law. And the risk for BNP Paribas, if it would not pay the fine, was to be forbidden to make business on the American market. But the other interesting aspect of the judgment had been that the court required that the executive officers who had not complied with the American laws be removed from the bank. The application of this fifth sub-principle of

responsibility would have a considerable impact. Once again if we go back to the climate, the inability of some governments to take measures in order to curb greenhouse gases emissions involve all together the responsibility of the state and the personal responsibility of the Heads of State.

4.6 The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.

We can see the major difference with the present laws. According to international rules, the states have full sovereignty on the use of their own natural resources and can be only sued if this use have a negative direct impact on a neighbour state. The responsibility principle is here the expression of the notion of stewardship of the planet. It is close to the well-known expression: “We borrow the planet from the future generations”. This is also what is sometimes called “functional ownership”. The biosphere in general as well as specific natural resources must be considered as part of a global common good and the owners of them as custodians for the sake of the whole humanity. It is a breakthrough compared to the traditional conception of sovereignty which applies to natural resources uses and abuses attached to the owner of a good or property.

4.7 The exercise of power, whatever the rules for which it is required, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.

In democracies, legitimacy and legality are often confused. It is very often talked about “legitimate exercise of power” as soon as the devolution of power has been conform to laws and constitutions. But it is not the real meaning of legitimacy. Legitimacy of power has to do with the general feeling that this power has been used in conformity with the common good. Even in authoritarian regimes such as the Chinese former imperial regime, the emperor would lose his legitimacy, justifying popular uprisings, if he had not been able to prevent his people from starvation. And in our present days power is only legitimate when it has been used in the best way possible at the service of the common good, including for governments which have been freely elected.

4.8 No-one is exempt from his or her responsibility for reason of helplessness, if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of being informed.

This last principle is of utmost importance in the 21st century. Let me take a concrete example of irresponsibility. It relates to the European rules for allowing new genetically modified organisms to be put on the market. The rules say that a company should not be held responsible for the negative impact of this new organism if, at the moment when it had been put on the market, the company could ignore, referring to the present state of scientific knowledge, the possible negative impacts. How did companies manipulated the European Commission? Very simply! Just by avoiding that the scientific knowledge be produced, advocating that three-month tests were enough, although the most dangerous impacts of GMO are long-term ones.

The same with the argument of powerlessness. No one state is able alone to face the climate change issue. The same powerlessness for each city taken separately, each company or each individual. Should we conclude from this powerlessness that no-one has a responsibility towards climate or that it is enough to give a lonely contribution? Of course not. Responsibility is about building cooperation and looking for allies.

5. Constitutionalisation of responsibility.

We have seen that there was a move all over the world towards constitutionalisation of the law. This fact in itself is in line with the responsibility principle. Governments can be held accountable of the way they translate into practice the dutiful intentions included in the preamble of the constitution.

However, a very important step forward should be to include the responsibility principle in the constitution, which would mean to endorse at the state or even sub-national level the Universal Declaration of Human Responsibilities or the eight sub-principles presented by the Declaration and which have been presented and commented. It would be an original contribution to a complete renewal of governance. As described previously, responsibility means looking at the best ways to reach an objective, through multi-level governance and co-responsibility of the different actors in the producing of the public good, in consideration of the means at hand.

Let us take the example of children protection, a case study presented in our panel about Bangladesh. Bangladesh has endorsed in a national law all the obligations described in the international convention it has signed about children's protection. Adopting such a law does not really define a strategy for change, neitherl for the police, nor for the courts or for the education system. Whenever the Bangladeshi Government will be criticised for not putting in practice the law it has passed, it will be easy for the administration to explain that it had not the means, whether financial or human, to put the law in practice. The situation would be different if, in line with the responsibility principle, the Bangladeshi Government would be requested not to pass a law but to define and enforce a true multi-stakeholder strategy, including children and parents, police, educators and courts with the co-responsibility to drive the global change by defining the best way in Bangladesh, considering the scarcity of resources, to reach the fundamental objectives behind the international convention. This will mean also that instead of passing future international conventions with so many details without due consideration to the diversity of contexts, to move to a new form of international convention defining guidelines resulting from international experience for the protection of the children, the national and sub-national governments being responsible to define and enforce the best means to respect these guidelines.

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